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3
4 **IN THE UNITED STATES DISTRICT COURT**
5 **FOR THE DISTRICT OF ARIZONA**
6

7 United States of America,

8 Plaintiff,

9 v.

10 Damian Quijada Jasso,

11 Defendant.

CR 16-00480-TUC-JGZ(BGM)

**MAGISTRATE JUDGE FINDINGS
AND RECOMMENDATION UPON
ADMISSION(S)**

12 Pending before the Court is a Second Superseding Petition to Revoke Probation
13 (Doc. 78) filed on July 28, 2017. On August 18, 2017, the Defendant appeared before
14 Magistrate Judge Eric J. Markovich and admitted Allegations C and D of the Petition,
15 and the Government moved to dismiss Allegation B at the time of Disposition. The
16 Defendant denied allegation A and requested a hearing on this allegation. Magistrate
17 Judge Markovich submitted Findings and Recommendations Upon Admission (Doc. 84)
18 to District Judge Jennifer G. Zipps. On September 5, 2017, District Judge Zipps adopted
19 the Magistrate Judge's Findings and Recommendations and accepted the Defendant's
20 admissions as to Allegations C and D (Doc. 85).
21

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23 An Evidentiary Hearing occurred before Magistrate Judge Bruce G. Macdonald on
24 September 6, 2017. The Defendant was present and assisted by counsel. The
25 Government presented one witness, United States Probation Officer Kathleen Nunez, and
26 admitted her exhibits into evidence. (Exhibits 1, 2 and 3 attached.) The Defendant did not
27 testify. Pursuant to LRCrim. 5.1, this matter came before Magistrate Judge Macdonald
28

1 for an evidentiary hearing and a report and recommendation. *See also* 18 U.S.C. §
2 3401(i). The Magistrate Judge recommends that the District Judge, after her independent
3 review, find the Defendant did violate the terms of his supervised release as set out in
4 Allegation A of the Second Superseding Petition.
5

6 **I. BACKGROUND**

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8 On March 11, 2016, Defendant pled guilty to the felony offense of Transportation
9 of Illegal Aliens for Profit. *See* Minute Entry 3/11/16 (Doc. 24.) On August 5, 2016, the
10 District Judge sentenced Defendant to probation for a term of Three (3) Years. *See*
11 Judgment in a Criminal Case filed on August 9, 2016 (Doc. 50).
12

13 On July 28, 2017, Defendant's Probation Officer, Kathleen Nunez, filed a Second
14 Superseding Petition to Revoke Probation (Doc. 78), alleging in Allegation A violation of
15 the following condition:
16

17 Standard Condition #1: "You must not commit another federal, state or local
18 crime."
19

20 The Defendant's actions alleged to have resulted in violation were described as
21 follows:
22

23 "On or about January 17, 2017, Jasso committed new criminal conduct of Attempt
24 to Trafficking in Stolen Property, in violation of A.R.S. §§ 13-1001 13-2307, a
25 Class 4 Felony, as evidenced by his conviction and sentence in Pima County
26 Superior Court Case No. CR20171391-001 to 2.5 years imprisonment. A Grade B
27 violation §7B1.1(a)(2)."
28

United States Probation Officer Kathleen Nunez, the Defendant's Probation

1 Officer testified at the hearing. Three exhibits were admitted into evidence by the
2 Government, Conditions of Probation (Exhibit 1), Pima County Superior Court certified
3 prior documents (Exhibit 2), and Arizona Department of Corrections certified documents
4 (Exhibit 3).

6 **II. ANALYSIS**

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8 “In evaluating the sufficiency of the evidence supporting a supervised release
9 revocation, ‘we ask whether, viewing the evidence in the light most favorable to the
10 government, any rational trier of fact could have found the essential elements of a
11 violation by a preponderance of the evidence.’” *United States v. Thum*, 749 F.3d 1143,
12 (9th Cir. 2014) (Quoting *United States v. King*, F.3d 1122 (9th Cir. 2010)) (internal
13 quotation marks omitted) (citations omitted); *see also* 18 U.S.C. § 3583€(3). The Federal
14 Rules of Evidence do not apply to a revocation hearing. Fed.R.Evid. 1101(d)(3); *United*
15 *States v. Martin*, 984 F.2d 308, 310-11 (9th Cir. 1993).

16
17
18 The Defendant’s attorney argued at the Evidentiary Hearing the Government
19 needed to prove the Defendant was the same individual who was convicted in Pima
20 County Superior Court Case No. CR20171391-001 and sentenced to 2.5 years in the
21 Arizona Department of Corrections.

22
23 The Defendant’s attorney filed a Petition for Writ of Habeas Corpus Ad
24 Prosequendum/Motion for Speedy Disposition of Probation Revocation (Doc. 75), in
25 which it was stated:

26
27 “Mr. Jasso was initially placed on probation in the above captioned case. Since
28 being place on probation, he has violated its terms, fled from supervision and is

1 currently on warrant status in the above captioned matter. Mr. Jasso is
2 currently in the custody of the Department of Corrections for the State of
3 Arizona in ... CR20171391.”
4

5 Therefore, the Defendant’s attorney represented that the Defendant was in the custody of
6 the Department of Corrections for the State of Arizona in case number CR20171391.
7

8 The certified records from the Clerk of the Superior Court for Pima County
9 (Exhibit 2) for case CR-20171391-001 show that Damian Quijada Jasso, date of birth
10 3/14/1994, pled guilty to the charge of Attempt to Traffic in Stolen Property, Second
11 Degree, a Class Four Felony, and sentenced to 2.5 years imprisonment in the Arizona
12 Department of Corrections.
13

14 The certified records from the Arizona Department of Corrections (Exhibit 3)
15 show that Damian Quijada Jasso, date of birth 3/14/1994, was sentenced on July 3, 2017,
16 to 2 years and 6 months (or 2.5 years) in the Arizona Department of Corrections in Cause
17 Number 20171391001.
18

19 **III. CONCLUSION**

20 The Government has established by a preponderance of the evidence that
21 Defendant Jasso violated the terms of his probation as set forth in Allegation A of the
22 Petition.
23

24 **IV. RECOMMENDATION**

25 Based on the foregoing and pursuant to 28 U.S.C. §636(b) and 18 U.S.C. §3401(i),
26 the Magistrate Judge **RECOMMENDS** that the District Judge, after her independent
27 review of the record, find that the Defendant did violate Standard Condition Number 1
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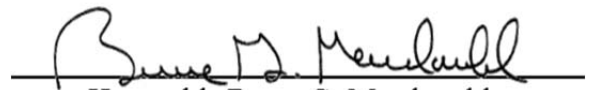
1 (Allegation A).

2 **IT IS FURTHER RECOMMENDED** that this matter be set for a Disposition
3
4 Hearing on Allegations A, B, C and D of the Petition, at **11:20 a.m. on October 11,**
5 **2017.**

6 Pursuant to 28 U.S.C. §636(b) and Rule 59(b)(2) of the Federal Rules of Criminal
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8 Procedure, any party may serve and file written objections with fourteen (14) days after
9
10 being served with a copy of this Report and Recommendation. No reply shall be filed
11
12 unless leave is granted from the District Judge. If objections are filed, the parties should
13 use the following case number: **CR 16-00480-TUC-JGZ.**

14 Failure to file timely objections to any factual or legal determination of the
15
16 Magistrate Judge in accordance with Fed.R.Crim. 59 may result in waiver of the right of
17 review.

18 Dated this 18th day of September, 2017.

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21 
22 Honorable Bruce G. Macdonald
23 United States Magistrate Judge
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